

PUBLIC HEALTH COUNCIL

Meeting of the Public Health Council, held Tuesday, June 22, 2004, at 10:00 a.m., at the Massachusetts Department of Public Health, Henry I. Bowditch Public Health Council Room, 250 Washington Street, Boston, Massachusetts. Public Health Council Members present were: Commissioner/Chair Ms. Christine Ferguson, Ms. Phyllis Cudmore, Mr. Manthala George, Jr., Ms. Maureen Pompeo, Mr. Albert Sherman (arriving late at 10:10 a.m.), Ms. Janet Slemenda, Dr. Thomas Sterne, and Dr. Martin Williams. Also in attendance was Attorney Donna Levin, General Counsel.

Chair Ferguson announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Massachusetts General Laws, chapter 30A, section 11A ½.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Ms. Malena Orejuela, MPH, Epidemiologist, Center for Health Information, Statistics, Research and Evaluation; Ms. Sally Fogerty, Assistant Commissioner, Center for Community Health; Ms. Carolyn Castro-Donlan, Deputy Director, Bureau of Substance Abuse Services; Ms. Joyce James, Director, Determination of Need Program, and Dr. Paul Dreyer, Associate Commissioner, Center for Health Quality Assurance and Control.

Note: Council Member Sherman arrived late and therefore did not vote on agenda items one and two.

RECORDS OF THE PUBLIC HEALTH COUNCIL MEETING OF APRIL 27, 2004:

Records of the Public Health Council Meeting of April 27, 2004 were presented to the Council for approval. After consideration, upon motion made and duly seconded, it was voted: (unanimously), (Council Member Sherman not present to vote) **to approve the records of the Public Health Council Meeting of April 27, 2004.**

PERSONNEL ACTIONS:

In letters dated June 16, 2004, Val W. Slayton, MD, MPP, Interim Director of Medical Services, Tewksbury Hospital, Tewksbury, recommended approval of the appointments and reappointments to the various medical staffs of Tewksbury Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted unanimously, [Council Member Sherman did not vote] That, in accordance with the recommendation of the Interim Director of Medical Services of Tewksbury Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following **appointments and reappointments to the various medical staffs of Tewksbury Hospital be approved for a period of two years beginning June 1, 2004 to June 1, 2006:**

| APPOINTMENTS: | MASS. LICENSE NO.: | STATUS/SPECIALTY: |
|------------------------|---------------------------|--|
| Thomas John, DPM | 1853 | Provisional Consultant Podiatry |
| Ardis Martin, MD | 214078 | Provisional Affiliate Staff Psychiatry |
| Christina Wei, MD | 57666 | Provisional Active Internal Medicine |
| REAPPOINTMENTS: | MASS. LICENSE NO.: | CATEGORY/SPECIALTY: |
| Daniel Berman, MD | 73877 | Consultant Radiology |
| Neil Kowall, MD | 46511 | Consultant Neurology |
| Alexandria Weida, EdD | 6594 | Allied Psychology |

In a letter dated June 14, 2004, Paul Romary, Executive Director, Lemuel Shattuck Hospital, Jamaica Plain, recommended approval of the reappointments to the medical and allied health professional staff of Lemuel Shattuck Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted unanimously, [Council Member Sherman did not vote] That, in accordance with the recommendation of the Executive Director of Lemuel Shattuck Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following **reappointments to the medical and allied health professional staff of Lemuel Shattuck Hospital be approved:**

| REAPPOINTMENTS: | MASS. LICENSE NO.: | STATUS/SPECIALTY: |
|-------------------------------------|---------------------------|--|
| John Cadigan, MD | 51090 | Active/Internal Medicine, Cardiology |
| Shala Asvadi, MD | 52195 | Consultant/Dermatology |
| Leendert Faling, MD | 28703 | Consultant/Pulmonary Medicine |
| James Quirk, MD | 72941 | Active/Internal Medicine, Infectious Disease |
| Sunil Shroff, MD | 215812 | Consultant/ Internal Medicine |
| John Harris, MD | 32488 | Consultant/Rehab. Medicine |
| Michael Steer, MD | 36742 | Consultant/Surgery |
| | | |
| Allied Health Professionals: | | |
| Omega Bradley, PA | 382 | |
| Elena Diggins, PA | 333 | |
| Teresa Margate, NP | 191582 | |
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In a letter dated June 11, 2004, Carlton M. Atkins, MD, Medical Director; Mederic D. McLaughlin, Chief Executive Officer; and Arthur M. Pappas, MD, Chairman, Board of Trustees, Massachusetts Hospital School, Canton, recommended approval of an appointment and reappointments to the staff of Massachusetts Hospital School. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted unanimously [Council Member Sherman did not vote] That, in accordance with the recommendation of the Medical Director, Chief Executive Officer, and Chairman, Board of Trustees of the Massachusetts Hospital School, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following **appointment and reappointments to the staff of Massachusetts Hospital School be approved for 2004-2006:**

| APPOINTMENT: | MASS. LICENSE NO.: | STATUS/SPECIALTY: |
|----------------------------|---------------------------|------------------------------------|
| Malavolti, Anna Marie, DDS | 21003 | Provisional Pediatric Dentistry |

| REAPPOINTMENTS: | MASS. LICENSE NO.: | STATUS/SPECIALTY: |
|-----------------------------------|---------------------------|---|
| | | |
| Atkins, Carlton M., MD | 31406 | Active/Orthopedics |
| Barnett, Elizabeth D., MD | 58612 | Consulting/Pediatrics/Infectious Disease |
| Bauer, Stuart B., MD | 36354 | Consulting/Pediatric Urology |
| Bernardo, John, MD | 44145 | Active/Pulmonary Medicine |
| Bierbaum, Benjamin E., MD | 28492 | Honorary/Orthopedics |
| Cho, Henry H., MD | 38435 | Consulting/Rehabilitation Medicine/Physiatry |
| Cilento, Bartley G., Jr., MD | 156057 | Consulting/Pediatric Urology |
| Cooper, Ellen R., MD | 56270 | Active/Pediatrics/Infectious Diseases |
| REAPPOINTMENTS: | MASS. LICENSE NO.: | STATUS/SPECIALTY: |
| Cooper, Thomas W., MD | 55056 | Consulting/Dermatology |
| Dodek, Anton B., MD | 74229 | Active/Pediatrics |
| Emans, John, MD | 35118 | Consulting/Orthopedics |
| Feingold, Murray, MD | 26641 | Courtesy/Genetics |
| Ficarelli, John P., DMD | 12246 | Active/ Dental and Oral Surgery |
| Flores, Alejandro Sandoval, MD | 59316 | Consulting/Pediatric Gastroenterology |
| Garcia-Rogers, Geraldine, DMD | 19107 | Active/Dental and Oral Surgery |
| Greer, Steven W., MD | 70786 | Courtesy/Pediatrics |
| Gurbani, Sheela, MD | 49457 | Active/Neurology |
| Hresko, M. Timothy, MD | 50281 | Consulting/Orthopedics |

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|---------------------------------|--------|---|
| Hsu, Katherine K., MD | 156985 | Consulting/Pediatrics |
| Klein, Jerome O., MD | 27955 | Consulting/Pediatrics/Infectious Diseases |
| Lagana, Frances J., DPM | 1882 | Consulting/Podiatry |
| Levoy, David, MD | 77123 | Active/Pediatric Psychiatry |
| Mahdavi, Peiman, DMD | 17965 | Active/Pediatric Orthodontics |
| Morgan, William J., MD | 12926 | Consulting/Orthopedics/Hand Surgery |
| Morris, Alan L., DMD | 12926 | Active/Pediatric Periodontics |
| Nabi, Nasser, MD | 33570 | Consulting/Cardiology |
| Pappas, Arthur M., MD | 27259 | Active/Orthopedics |
| Patel, Neal, MD | 161326 | Active/Pediatrics |
| Petrie, Scott F., DMD | 16601 | Active/Pediatric Dentistry |
| Reardon, Christine Campbell, MD | 73469 | Active/Pulmonary Medicine |
| Sachdev, Aruna, MD | 50059 | Active/Rehabilitation Medicine |
| Schneider, Arthur J., MD | 55721 | Consulting/Radiology |
| Synder, Brian D, MD, PhD | 76200 | Consulting/Orthopedics |
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| ALLIED HEALTH PROFESSIONALS: | MASS. LICENSE NO.: | STATUS/SPECIALTY: |
|---|---------------------------|--------------------------|
| Balmaseda, Isabel M., ABT | 551 | Lic.Ac.M.Ed |
| Jones, Hohn T., PhD | 4757 | Psychology |
| King, Diana Levy, Lic. Psychologist, PsyD | 4907 | Neuro Psychology |
| Klein, Wayne L., PhD | 6368 | Psychology |
| Oller, Carolanne, ABT | 2149 | Massage Therapist |
| Stern, Cathy D., OD | 2816 | Optometry |
| | | |

| ALLIED HEALTH PROFESSIONALS-PEDIATRIC NURSE PRACTITIONERS: | MASS. LICENSE NO.: | |
|---|---------------------------|--|
| Bell, Sheila A., NP-BC | 123456 | |
| Closs, Barbara D., MS RNCS | 238540 | |
| Connolly, Kate, NP-BS | 152188 | |
| Fertitta, Luisa, MS RNC | 116474 | |
| Madden, Karen Wheeler, NP-BC | 174567 | |

STAFF PRESENTATION:

“MASSACHUSETTS DEATHS 2002”, BY MALENA OREJUELA, MPH, EPIDEMIOLOGIST, CENTER FOR HEALTH INFORMATION, STATISTICS, RESEARCH AND EVALUATION:

Ms. Malena Orejuela, MPH, Epidemiologist, Center for Health Information, Statistics, Research and Evaluation, presented “Massachusetts Deaths 2002”. Ms. Orejuela said in part, “...Fewer Massachusetts residents are dying from heart disease, chronic lower respiratory disease, HIV/AIDS, motor vehicle injuries and all injuries combined. In 2002, a total of 56,881 Massachusetts residents died. Heart disease and cancer remained the two most prevalent causes of death, accounting for half of all deaths. There were slight increases (1 percent) in cancer and diabetes death rates (0.5 percent). On the other hand, there were large increases in some of the leading causes of death. The death rate for influenza and pneumonia increased significantly by 16 percent in the last year. Changes in mortality from influenza and pneumonia may reflect year-to-year variation in nationwide patterns in the severity and prevalence of influenza. Homicide continues its upward trend for the last three years, increasing from 153 in 2001 to 185 in 2002. Almost half of this increase is due to an increase in firearm deaths.”

“In 2002,” Ms. Orejuela continued, “Life expectancy at birth continued to be higher in Massachusetts when compared with the U.S. (78.4 years compared with 77.4 years). In 2002, a woman born in Massachusetts could expect to live to be 81, and a man could expect to live to 76 years. Premature mortality rate (PMR) indicates that Springfield, Brockton, New Bedford, Worcester and Lynn had the highest PMR’s among the state’s 30 largest communities. The PMR reflects health status of a community and will be used by MDPH to identify communities that warrant greater emphasis on disease prevention and health promotion. Brookline, Newton and Arlington had the lowest PMR’s among the state’s largest communities. Starting with this year’s report, death rates adjusted for educational attainment are presented. Mortality is

inversely associated with educational attainment: The age-adjusted death rate for those with less education (high school or less) was three times higher than the rate of those with higher education.”

Among the highlights of Massachusetts Deaths 2002:

- Death rates from heart disease, chronic lower respiratory disease, HIV/AIDS, motor vehicle injuries combined decreased from 2-8 percent.
- In 2002, there were 229 Massachusetts residents who died from HIV/AIDS, the second lowest number in Massachusetts since 1990. The proportion of people dying from HIV/AIDS in the ages 45 years and older has more than doubled in the last decade.
- The influenza and pneumonia death rate increased 16 percent from the previous year. Changes in mortality from influenza and pneumonia may reflect year-to-year variation in nationwide patterns in the severity and prevalence of influenza.
- Homicides continue their upward trend for the last three years, increasing from 153 in 2001 to 185 in 2002.
- Diabetes continues to be among the top five leading causes of death for all groups except for white non-Hispanics.
- The infant mortality rate was the second lowest in Massachusetts history.
- Injuries were the leading cause of death for Massachusetts residents between the ages of 1 to 44 years.
- Life expectancy remains high. Life expectancy in Massachusetts at 78.4 years is higher than the U.S. rate of 77.4 years.
- Most mortality rates are lower in Massachusetts than in the U.S., ranging from 10 percent lower for chronic lower respiratory disease (CLRD) to 69 percent lower for firearm deaths.
- Black non-Hispanics have the highest age-adjusted death rate, 31 percent higher than the rate for white non-Hispanics.
- Disparities persist for selected causes of death: Black non-Hispanics and Hispanics died at a rate 8 to 12 times higher than of white non-Hispanics. Black

non-Hispanics were 14 times more likely to be killed by firearms than white non-Hispanics.

- As expected, most deaths occur at older ages, but for Massachusetts, the largest number of deaths continue to occur among the oldest old: people aged 85 and over – about 1 out of 3 deaths is to a person age 85 or older (33 percent); almost 2 out of 3 deaths is to a person age 75 and older (65 percent).
- Massachusetts either achieved or moved toward most of the Healthy People 2010 mortality objectives. Out of 40 HP2010 mortality objectives examined, Massachusetts has achieved 17 targets and is within 25 percent of achieving targets for 9 indicators.

PROPOSED REGULATION:

INFORMATIONAL BRIEFING ON PROPOSED AMENDMENT TO 105 CMR 130.000, HOSPITAL LICENSURE, REGARDING INCORPORATION OF SUBSTANCE ABUSE REGULATIONS:

Dr. Paul Dreyer, Associate Commissioner, Center for Quality Assurance and Control, presented the informational briefing on the proposed amendment to 105 CMR 130.000, Hospital Licensure, regarding Incorporation of Substance Abuse Regulations. Dr. Dreyer said, “Pursuant to M.G.L. cc.111B and 111E the Department is charged with oversight of facilities that provide treatment for substance abuse and has promulgated regulations for the licensing and approval of such facilities. The statutes and regulations do not, however, apply to general hospitals licensed by the Department pursuant to section 51 of M.G.L. c.111. Because licensed general hospitals often provide same or similar services as those provided by drug and alcohol treatment facilities, the Department is seeking to impose the same standards and requirements that apply to substance abuse facilities to substance abuse programs provided by general hospitals. The Department proposes to do so by amending 105 CMR 130.000, the hospital licensure regulations, to incorporate by reference the substance abuse facilities regulations.”

Proposed Amendment to the Hospital Licensure Regulations

The Department proposes to add the following section to 105 CMR 130.000:

130.365: Substance Abuse Services

Each hospital that offers a separate, identifiable substance abuse treatment program for persons suffering from the effects of drug or alcohol abuse shall comply with the applicable regulatory requirements set forth in 105 CMR 160.000: Acute Care Inpatient Substance Abuse Detoxification Treatment Services; 105 CMR 161.000: Short Term Intensive Inpatient

Treatment Centers; 105 CMR 162.000: Licensure of Substance Abuse Outpatient Services; 105 CMR 165.000: Halfway Houses for Alcoholics; 105 CMR 166.000: Approval of Residential Alcohol Treatment Programs for Operating Under the Influence Offenders; and 105 CMR 750.000: Licensing and Approval of Drug Treatment Programs, which are incorporated herein by reference.

The Department will hold a public comment hearing on August 3, 2004 and will return to the Council with a final recommendation.

INFORMATIONAL ONLY – NO VOTE

Note: Chair Ferguson stepped out of the room and Council Member Sherman acted as Chair.

REGULATIONS:

REQUEST FOR PROMULGATION OF AMENDMENTS TO 105 CMR 168.000: LICENSURE OF ALCOHOL AND DRUG COUNSELORS:

Ms. Carolyn Castro-Donlan, Deputy Director, Bureau of Substance Abuse Services, said in part, “The Bureau has amended 105 CMR 168.000 to include the licensing and renewal fee of \$100.00. This is new fee for the licensing of alcohol and drug counselors and was approved by the Executive Office of Health and Human Services and the Division of Administration and Finance in early 2004. As required by statute a final hearing was held on the proposed regulations on June 10, 2004 and the appropriate public comment period was allowed. We request permission to promulgate the amended regulation 105 CMR 168.000 to include the approved licensing fee of \$100.”

After consideration, upon motion made and duly seconded, it was voted unanimously (Chair Ferguson was not present to vote), to **approve the Request for Promulgation of Amendments to 105 CMR 168.000: Licensure of Alcohol and Drug Counselors**; that a copy of the approved regulations be forwarded to the Secretary of the Commonwealth; and that a copy of the regulations be attached to and made a part of this record as **Exhibit Number 14,789**.

REQUEST FOR FINAL PROMULGATION OF PROPOSED AMENDMENTS TO DETERMINATION OF NEED REGULATIONS 105 CMR 100.000 GOVERNING FILING DAYS FOR APPLICATIONS AND AMENDMENTS:

Ms. Joyce James, Director, Determination of Need Program, said, “The purpose of this memorandum is to request the Public Health Council’s approval for final promulgation of the amendments to the Determination of Need Regulations 105 CMR 100.302, governing Filing

Days for Applications and Amendments. The amendments: a) change the filing day of Determination of Need (DON) applications for acute care hospital projects, other than projects for innovative services or new technologies, from the first business day of July to the business day on which the application is received; b) change the filing day of applications for hospital projects that are subject to licensure by the Department pursuant to M.G.L. c.111, s.51, other than acute care hospital projects, from the first business day of July to the business day on which the application is received; provided, however, that the filing day for applications for Long Term Care Hospitals shall be the first business day of September, beginning September 2005; c) delete an obsolete provision that allowed filing days, on the first business day of May 1996 and 1997 of applications for replacement and substantial renovation projects of nursing and rest homes located in an urban area that met certain poverty levels and were determined by the Department to have an occupancy rate greater than or equal to 97% during the moratorium on the filing of other such applications; and d) delete the filing day for all other applications on the first business day of January, since no application currently fits into this category. Spreading out the filing day of the applications over the year will allow the limited DON staff to better manage its work flow and allow applicants additional time for adequate planning and preparation of applications. The Public Health Council was briefed on the proposed amendments on April 27, 2004. A public hearing on the proposed amendments was held on June 1, 2004 in the Public Health Council Room, Department of Public Health, 250 Washington Street, Boston, MA. One person attended the hearing, David Storto, President of Partners Continuing Care, a division of Partners HealthCare. Mr. Storto testified and submitted written comments at the hearing. Massachusetts Hospital Association also submitted written comments.”

After consideration, upon motion made and duly seconded, it was voted unanimously (Chair Ferguson was not present to vote) to **approve the Request for Final Promulgation of Proposed Amendments to Determination of Need Regulations 105 CMR 100.000 Governing Filing Days for Applications and Amendments**; that a copy of the approved regulations be forwarded to the Secretary of the Commonwealth and that a copy of the regulations be attached to and made a part of this record as **Exhibit Number 14,790**.

REQUEST FOR PROMULGATION OF EMERGENCY AMENDMENT TO DETERMINATION OF NEED REGULATIONS 105 CMR 100.000 GOVERNING APPLICATION FILING DAYS FOR INNOVATIVE SERVICES AND NEW TECHNOLOGY:

Ms. Joyce James, Director, Determination of Need Program, said, “The purpose of this memorandum is to request the Public Health Council’s action on the emergency promulgation of the proposed amendment to the Determination of Need Regulations 105 CMR 100.302, Filing Days for Applications and Amendments. This amendment changes the filing day of applications for Neonatal Intensive Care Units (NICU) from the first business day of August 2004 to the first business day of August 2005. The current emergency promulgation is necessary because the

Department and its Perinatal Advisory Group are currently in the process of reviewing the maternal and newborn care sections of 105 CMR 130.000 (the hospital licensure regulations). The final revised regulations, which may affect the DoN process in addressing the need for NICU beds, will not be completed in time for the August 2004 filing day of NICU applications. This amendment will be effective upon filing with the Secretary of State's office and will remain in effect for 90 days. A public hearing will be held on the proposed emergency amendment on August 3, 2004. Department Staff anticipates returning to the August 24, 2004 meeting of the Council with the final version of the regulation for adoption."

After consideration, upon motion made and duly seconded, it was voted, unanimously (Chair Ferguson did not vote) **to approve the Request for Promulgation of Emergency Amendment to Determination of Need Regulations 105 CMR 100.000 Governing Application Filing Days for Innovative Services and New Technology**; that a copy of the approved regulations be forwarded to the Secretary of the Commonwealth; and that a copy of the regulations be attached to and made a part of this record as **Exhibit Number 14,791**.

The meeting adjourned at 10:45 a.m.

Christine Ferguson, Chair
Public Health Council

LMH/sb